

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2115 OF 2006

Amirul @ Hamirul Haresh Shaikh
Aged 37 years residing at own
House at Ajmal Chawl, Room No.1,
Gate No.7, Malwani, Malad (W),
Mumbai - 400 095.
Present at Nasik Road,
Central Prison, Nashik.

..Petitioner

Versus

1. The Commissioner of Police,
Mumbai.
2. The State of Maharashtra
(through the Secretary, Home
Department (Spl.), Mantralaya,
Mumbai.
3. The Secretary, Advisory Board
Constituted under Section 9 of
MPDA Act c/o. Home Department
(Spl.) Mantralaya,
Mumbai - 400 032.
4. The Superintendent,
Nasik Road Central Prison,
Nasik

..Respondents

Mr.Anoop Pandey i/b.Mr.S.Manjula Roa for the
Petitioner.
Mr.D.S.Mhaispurkar, A.P.P. for the Respondents.

**CORAM :- DR.S.RADHAKRISHNAN &
SMT.R.S.DALVI,JJ.**

DATE : 20TH JULY,2007

JUDGMENT :- (PER : DR.S.RADHAKRISHNAN,J.)

1. By this Petition, the Petitioner is
challenging the detention order dated 21st July,2006
passed under "The Maharashtra Prevention of Dangerous
Activities of Slumlords, Bootleggers, Drug-offenders
and Dangerous Persons Act,1981 (hereinafter referred

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to as the said Act) by the Commissioner of Police, Mumbai. Pursuant to the said detention order, the Petitioner was arrested on 25th July, 2006 and he is in custody.

2. The Petitioner has been detained under the said Act on the ground that he is a Slumlord and that his activity is causing prejudice to the maintenance of public order. Section 2(a) of the said Act defines, "acting in any manner prejudicial to the maintenance of public order" means-

(i) in the case of a slumlord, when he is engaged, or is making preparations for engaging, in any of his activities as a slumlord, which affect adversely, or are likely to affect adversely, the maintenance of public order;

. Similarly Section 2(f) of the said Act defines;

(f) "slumlord" means a person, who illegally takes possession of any lands (whether belonging to Government, local authority or any other person) or enters into or creates illegal tenancies or leave and licence agreements or any other agreements in respect of such lands, or who constructs unauthorised structures thereon for sale or hire, or gives such lands to any persons on rental or leave and licence basis for construction, or use and occupation, of unauthorised structures, or who knowingly gives financial aid to any persons for taking illegal possession of such lands, or for construction of unauthorised structures thereon, or who collects or attempts to collect from any occupiers of such lands rent, compensation or other charges by criminal intimidation, or who evicts or attempts to evict any such occupiers by force without resorting to the lawful procedure, or who

abets in any manner the doing of any of the abovementioned things;

It also defines "unauthorised structure"

(g) "unauthorised structure" means any structure constructed, without express permission in writing of the Municipal Commissioner in a Municipal Corporation area, and elsewhere of the Collector, or except in accordance with any law for the time being in force in the area concerned.

3. The brief facts of the case are, that one Jagdish Chaugule, who was a recovery Clerk in Deputy Collectors (Encroachment and Removal) found the Petitioner to be carrying out number of illegal construction and one of them was a ground floor plus two floors structure on Government land at Adarsha Band Pathak Mandal, Near Balwadi, Madhlapada, Khardanda, Khar (W), Mumbai. Mr.Chaugule had informed the said fact to his office, thereupon notice was issued calling upon the Petitioner and his associates to produce documents justifying the legality of the structure, and as the Petitioner could not satisfy the Authorities with the relevant documents, the structures were demolished by the Deputy Collectors' Office on 9th November,2005, 24th November,2005 and 9th December,2005, however, again the said structures were re-erected. In view thereof, Mr.Chaugule had filed a complaint under the Maharashtra Slum (Improvement, clearance and redevelopment) Act,1971 with Khar Police Station against the Petitioner and his associates on 17th

February,2006. In that behalf, the Police had also recorded statements of 16 persons, who clearly indicated the illegal activities carried out by the Petitioner. The Petitioner was arrested on 20th March,2006, in pursuance of the aforesaid case. Thereafter, the Petitioner was granted bail on 24th March,2006.

4. Over and above, on inquiries made in that area it was found that the Petitioner along with his associates were creating a reign of terror and were constructing illegal constructions on demanding money from various persons to allow them to occupy and indiscriminately throw them out. Various witnesses were not willing to make any complaint and after a lot of pursuation, it appears that the three persons had given statements. The first one is Witness-A, on 5th June,2006 has stated that the Petitioner along with his associate Munwar Khan who has to encroach on Government and private land and evict occupants by force without resorting to lawful procedure and constructed unauthorised structures for sale, or to grant on leave and license basis. It is mentioned in the said statement that the Petitioner had created terror in the said area along with his associates especially in the localities of Madhalapada, Kotpada, Warinpada, Patilpada, Rammandir area of Khardanda, Khar (W), Mumbai. The witness has stated that he had taken a house on rental basis from the Petitioner and

his associate Munwar Khan at Rs.15,000/- as deposit amount and Rs.1500/- as monthly rent almost a year back, still they were not receiving proper receipts and it appears that in the last week of January,2006 around 11.00 a.m. Munwar Khan and the Petitioner and his other 4-5 associates were levelling some open land where the said witness asked for documents upon which the Petitioner had threatened with iron rod that not to discuss about the law, documents etc. and he had abused very badly and he had threatened with dire consequences and thereafter, the Petitioner and all his associates entered the house of the said witness and thrown out all the household articles and when lot of persons living in that area assembled in that place at that time they were threatened that they should run away otherwise they will be at dire consequences, as a result, all the persons who had assembled therein ran helter-skelter, and the witness was threatened to vacate the room by the evening itself. In view of the same, the witness had vacated the said room and he was very scared even to lodge a complaint.

5. Another Witness-B had stated on 8th June,2006

that the Petitioner and his associate Munwar Khan had encroached on various open lands and used to demand Rs.10,000/- as initial deposit and thereafter even did not provide the premises. When the witness asked for his money, he was threatened with wooden bamboo and he was told that he should go away from the said place

otherwise he will be killed. During the said process it appears that the witness was kicked by the Petitioner on his waist, due to which the Petitioner failed down. Witnessing this incident, the people gathered from entire area ran away helter-skelter and they were extremely scared.

6. Similarly, Witness-C, in his statement dated 13th June, 2006 stated that he knows the Petitioner and his associate Munwar Khan and they encroached on Government and private lands and have occupied by force without resorting lawful procedures and constructed unauthorised structure thereon and hired on rental or leave and license basis. The said witness stated that during February, 2006, the Petitioner and his associate Munwar Khan and two more unknown associates suddenly went into the premises of the witness and asked witness to vacate the room, when the witness refused, he was pushed down and he fell down on a trunk, the wife of witness had started shouting for help at that time, a large number of persons of the neighbourhood were gathered at which point of time, the Petitioner's associate Munwar Khan rushed towards them and started beating them along with two other associates and the said Munwar Khan and the Petitioner threatened everyone that they should leave their premises within 15 days, otherwise everyone will be burnt along with house, wherein they were living. Everyone ran away panic stricken.

7. Based on the above criminal case as well as three statements, the Commissioner of Police had finally passed the order of detention on 21st July,2006, which order of detention was executed on 25th July,2006.

8. Perused the Petition as well as affidavit-in-reply filed by the Commissioner of Police, Brihanmumbai and the affidavit of Under Secretary, Home Department, Government of Maharashtra. In the affidavit-in-reply of the Commissioner of Police, all the above circumstances and the dangerous activities of the Petitioner are set out and the affidavit also discloses the steps taken in pursuance of which the detention order was issued. It appears that after recording the last statement of witness on 13th June,2006, the proposal was forwarded to the Deputy Commissioner of Police, Zone-IX on 23rd June,2006 and thereafter the papers were sent to Senior Inspector of Police, PCB, CID, who has given his endorsement on 26th June,2006. The 24th June,2006 and 25th June,2006 were holidays. Thereafter the Deputy Commissioner of Police (Preventive) given his endorsement on 28th June,2006 and the papers were forwarded to the Additional Commissioner of Police (Crime), who has given his endorsement on 29th June,2006. Thereafter, the proposal and papers of the present Detenue were perused by the Commissioner and

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they were forwarded to the Office of the Senior Police Inspector CID for the purpose of translation in Hindi language, which language is known to the Detenue and in all the record contains 603 pages. All the records were checked and appropriate endorsements were made by the Senior Inspector of Police, PCB, CID, Mumbai on 17th July,2006 and thereafter the Deputy Commissioner of Police (Preventive) went through all the papers and put his endorsement on 18th July,2006 and the papers were forwarded to the Commissioner of Police and the order of detention came to be issued on 21st July,2006.

9. The Commissioner of Police has stated that in the above, all steps were taken promptly and the live link had not snapped.

10. The learned Counsel appearing on behalf of the Petitioner Mr.Pandey contended that the activities of the Petitioner cannot be construed to be of a dangerous person or that the activities would amount to interference with the public order. In that behalf Mr.Pandey referred to and relied upon a Division Bench Judgment of our Court in the matter of **Ramesh Ganpat Ghanekar Vs. R.D.Tyagi and Anr. 1986 Cri.L.J.1421**

wherein, this Court had taken a view that

"merely if a person carries a business as a bootlegger automatically it will not amount to interference with adversely affect the maintenance of public order.

11. Mr.Pandey also referred to another judgment of the Hon'ble Supreme Court in the case of **Lallan Prasad Chunnilal Yadav Vs. S.Ramamurthi and Others AIR 1993 SC 396**, wherein, the Hon'ble Supreme Court has held that;

blows situation merely or fist blows of speaking few words or giving few kick or not create a public order.

12. Mr.Pandey also referred to another judgment of the Hon'ble Supreme Court in the case of **Pradeep Nilkanth Paturkar Vs. S.Ramamurthi and Others, AIR 1994 SC 656**, wherein the Hon'ble Supreme Court struck down the order of detention on the ground of delay especially as the same was unexplained delay of 5 months and 8 days and it took more than 4 months from time of submission of proposals. The main ground on which the said order was struck down was, as the delay was not properly explained and as such there was no live link and the same had snapped.

13. Mr.Pandey further relied on the judgment of the Madras High Court in the case of **P.Kandaswamy Vs. State of Tamil Nadu and Ors. 1994 CRI.L.J.2756**, wherein the Madras High Court had taken a view that merely an using a penknife causing an injury on hand would not amount to case of disturbance of public order.

14. Mr.Pandey therefore contended that having regard to the facts and circumstances of the case and

also the incidents referred therein would not amount to a serious case of disturbance of public order and merely because the Petitioner may be a slumlord would not necessarily mean his activities were causing serious prejudice to the maintenance of public order.

15. Mr.Pandey also contended that the incidents referred therein were stale and there is no proximity when the detention order was passed and there is no clear propensity on the part of the Petitioner in interfering with the maintenance of public order, hence, there was no necessity to pass such an order. Hence, Mr.Pandey submitted that the impugned order ought to be quashed and set aside.

16. Mr.Mhaispurkar, the learned A.P.P. appearing on behalf of the Respondent pointed out that the Commissioner of Police has filed a very detailed affidavit-in-reply and also affidavit-in-reply from the under Secretary, Home Department, Government of Maharashtra, clearly indicates that the activities of the Petitioner are dangerous to the public especially in Khardanda area and the Petitioner had created a reign of terror in the said area. Mr.Mhaispurkar pointed out that the manner in which the Petitioner and his associates had behaved and threatened and inflicted blows would clearly indicate that the entire area was terrorised, seriously affecting the maintenance of "Public Order".

17. Mr.Mhaispurkar further pointed out that as far as the alleged delay is concerned, the Commissioner of Police as well as the Under Secretary, Home Department has clearly explained entire sequence of the events. The entire period taken from the time the proposal was sent till the detention order was passed has been fully explained and there is absolutely no undue delay as set out in those affidavits. In view thereof, Mr.Mhaispurkar also contended that this Court ought not to interfere with the aforesaid order of detention.

18. Having considered all the facts and circumstances of the case in the above case and after perusal of the Petition and both the affidavits-in-reply as well as all the aforesaid judgments, it is clear that one Criminal Case has been filed against the Petitioner, as well as the statements of three witnesses very clearly bring out that the dangerous activities of the Petitioner would squarely amount to interference of the maintenance of the public order especially in view of the definitions as provided in the said Act, which are quoted hereinabove. The incidents referred to therein are not of a minor nature. The entire area of Khardanda appears to have been affected by the repeated activities of the Petitioner and the whole purpose of the detention is to prevent the Petitioner from

disturbing maintenance of the public order in the said area.

19. The judgments cited by Mr.Pandey would not be of any assistance to Mr.Pandey inasmuch as in all those judgments, wherein it has been construed that there were no serious acts involving violation of public order, whereas in the instant case the incidents referred would clearly constitute a violation of public order.

20. As far as the delay is concerned, it is very clear that the delay has been properly explained by the Commissioner of Police as well as the Under Secretary, Home Department, Government of Maharashtra, Mumbai. Over and above in that behalf the learned A.P.P. has relied on the judgment in the case of **Rajesh Vasant Jadhav Vs. State of Maharashtra & Anr, 006(7) LJSOFT 82**, wherein it is clearly noted that mechanical calculations of days and months cannot be done. The rule is that as long as the live link between prejudicial act and detention order is not snapped and as long as alleged incident is not too remote to show that the propensity to indulge in future prejudicial activities had ceased to exist and it cannot be said that the live link had been snapped.

21. Under the aforesaid facts and circumstances of the case, it is very clear that the Petitioner has

been repeatedly indulging in dangerous activities which clearly show that there is a violation of public order and propensity is very much continuing and the live link had not snapped by the time the detention order was passed and even so called delay has been properly explained. Under the aforesaid facts and circumstances of the case, we do not find any ground made out for interference in the said impugned detention order. Hence, Rule stands discharged.

(SMT.R.S.DALVI,J.)

(DR.S.RADHAKRISHNAN,J.)